

NO. 36932-0-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL TRAYLOR

Appellant.

FILED
COURT OF APPEALS
DIVISION II
08 MAR 28 PM 1:34
STATE OF WASHINGTON
BY [Signature]

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR CLARK COUNTY

The Honorable John P. Wulle, Judge

BRIEF OF APPELLANT

CATHERINE E. GLINSKI
Attorney for Appellant

CATHERINE E. GLINSKI
Attorney at Law
P.O. Box 761
Manchester, WA 98353
(360) 876-2736

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A. ASSIGNMENTS OF ERROR

1. The restitution order entered after expiration of the statutory time limit is invalid.

2. The court failed to hold the state to its burden of proving the amount of restitution.

Issues pertaining to assignments of error

1. The court below entered an order determining restitution more than 180 days after the sentencing hearing. Where the state made no request to continue the restitution hearing within the statutory time limit and the court made no findings of good cause for the delay, is the restitution order invalid?

2. Although the parties disputed whether the damages were causally connected to appellant's offense and whether extraordinary circumstances justified reducing the restitution amount, the court ordered restitution in the full amount requested by the state, without an evidentiary hearing. Did the court's action relieve the state of its burden of proving the amount of restitution by a preponderance of the evidence within the statutory time limit?

B. STATEMENT OF THE CASE

On November 3, 2006, the Clark County Prosecuting Attorney charged appellant Michael Traylor with one count of negligent driving in

the first degree. CP 1; RCW 46.61.5249(1)(a). Traylor entered a guilty plea that day. CP 2-10. The Statement of Defendant on Plea of Guilty contains the following paragraph:

IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I UNDERSTAND THAT:

...

- (e) In addition to sentencing me to confinement, the judge will order me to pay \$250.00 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees, and the costs of incarceration.

CP 3-4.

On November 29, 2006, Traylor was sentenced to 90 days confinement, with 30 days suspended. CP 23. The judgment and sentence form also states that restitution was "to be set." CP 24.

The record indicates that a Review of Restitution hearing was set for February 16, 2007. Supp. CP (Sub. No. 23, Citation, filed 2/1/07) (Appendix A). The minute entries from that day indicate that the hearing was stricken "per court." Supp. CP (Journal of Criminal Minute Entries, 2/16/07) (Appendix B). Another Review of Restitution hearing was scheduled for May 15, 2007. Supp. CP (Sub. No. 25, Citation, filed 4/17/07) (Appendix C). That hearing was also stricken. Supp. CP

(Journal of Criminal Minute Entries, 5/15/07) (Appendix D). Another Review of Restitution hearing was scheduled for July 2, 2007. Supp. CP (Sub. No. 26, Citation, filed 6/5/07) (Appendix E). The next day, a citation was filed notifying Traylor that a Review of Restitution hearing was set for June 7, 2007. Supp. CP (Sub. No. 27, Citation, filed 6/6/07) (Appendix F). The minute entries from June 7, 2007, indicate that the case was called at 10:21 a.m., that the defendant did not appear, and that the next court appearance was set for 7/19/07. Supp. CP (Journal of Criminal Minute Entries, 6/7/07) (Appendix G). Minute entries from July 2, 2007, indicate that the hearing on that date was stricken. Supp. CP (Journal of Criminal Minute Entries, 7/2/07) (Appendix H).

There is no indication in the record that the state requested continuance of the restitution hearings, and the court entered no findings of good cause for postponing the restitution determination.

The restitution hearing finally commenced on July 19, 2007. At that hearing, the state requested that the court order restitution in the amount of \$110,634.81. 1RP¹ 3. Both parties informed the court that there was no dispute as to the amounts paid, although the defense was disputing whether the full amount should be assessed as restitution in light of the victim's comparative fault. 1RP 4. Defense counsel asked for

¹ The Verbatim Report of Proceedings is contained in two volumes, designated as follows: 1RP—7/19/07; 2RP—9/25/07.

additional time to research the issue, and the hearing was set over. 1RP 4, 6.

Defense counsel filed a memorandum of authorities on September 24, 2007, arguing that the state could not establish the necessary causation to hold Traylor responsible for the full amount of damages. CP 78. Counsel stated that the victim had pulled his truck to the side of the road when it ran out of gas, and he was refueling when he was struck by Traylor's vehicle. Based on the location of the victim's truck, it appeared that the victim would have been standing in the lane of travel when he was hit. CP 77. Therefore, his actions contributed to the damages, and the state could not show the injuries would not have occurred but for Traylor's negligent driving. CP 78.

The restitution hearing resumed on September 25, 2007. At the hearing, the state argued that the court should not consider the issue raised by the defense, since Traylor had agreed to pay restitution and the parties had already agreed to the amounts. 2RP 3. Defense counsel explained that while they agreed that the restitution report accurately listed the expenses incurred, the question before the court was how to apportion those costs, because the state had to prove "but for" causation. CP 4.

The court ordered that Traylor pay the full amount requested as restitution. It reasoned that this order was appropriate because Traylor

agreed, as part of his change of plea, to pay restitution and because the parties agreed that the expenses included in the restitution report directly resulted from the injuries sustained during the accident. 2RP 6-7.

The court noted that there was a factual question as to whether the victim was over the fog line at the time of the accident but said it knew of no case holding that an evidentiary hearing was necessary to determine the contributory negligence of the victim. 2RP 6-7. The court said it would leave those questions unresolved and let the Court of Appeals determine if another hearing was needed. 2RP 7.

Defense counsel noted her objection to the order. She explained that background research and accident reports showed that the victim was standing next to his truck, which was parked on the fog line, at the time of impact. Since he was standing in the lane of travel, the state could not show that the damages would not have occurred but for Traylor's actions. 2RP 8.

On October 22, 2007, a court order was filed setting restitution in the amount of \$110,674.81, including \$10,186.45 to the crime victims' compensation program and \$100,488.35 to Michael and Theresa Kenning. CP 79-80². Traylor filed this timely appeal. CP 81.

² Inexplicably, the restitution order is titled "Second Amended Supplemental Order Setting Restitution." The record contains no previous order which could have been amended or supplemented, however. CP 79.

C. ARGUMENT

1. THE RESTITUTION ORDER IS INVALID BECAUSE IT WAS ENTERED AFTER EXPIRATION OF THE 180-DAY TIME LIMIT WITHOUT A FINDING OF GOOD CAUSE FOR THE DELAY.

A court's authority to order restitution is derived solely from statute, and the sentencing court may not exceed the authority granted under the controlling restitution statute. State v. Martin, 137 Wn.2d 149, 155, 969 P.2d 450 (1999); State v. Hennings, 129 Wn.2d 512, 519, 919 P.2d 580 (1996). A restitution order is void if the statutory provisions are not followed. State v. Duback, 77 Wn. App. 330, 332, 891 P.2d 40 (1995).

The court's authority to impose restitution is defined by RCW 9.94A.753. Under that statute, except as to benefits paid under the crime victims' compensation act, the sentencing court must determine the amount of restitution at the sentencing hearing or within 180 days. RCW 9.94A.753(1)³, (7)⁴. Although the court can continue the restitution

³ .” RCW 9.94A.753(1) provides as follows:

(1) When restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within one hundred eighty days except as provided in subsection (7) of this section. The court may continue the hearing beyond the one hundred eighty days for good cause. The court shall then set a minimum monthly payment that the offender is required to make towards the restitution that is ordered. The court should take into consideration the total amount of the restitution owed, the offender's present, past, and future ability to pay, as well as any assets that the offender may have.

⁴ RCW 9.94A.753(7) provides as follows:

hearing beyond 180 days for good cause, the state must request a continuance before the time limit has expired. State v. Tetreault, 99 Wn. App. 435, 438, 998 P.2d 330, review denied, 141 Wn.2d 1015 (2000); State v. Johnson, 96 Wn. App. 813, 816-17, 981 P.2d 25 (1999). A challenge to the timeliness of a restitution order may be raised for the first time on appeal. State v. Moen, 129 Wn.2d 535, 547-48, 919 P.2d 69 (1996).

Here, Traylor was sentenced on November 29, 2006. CP 22. The judgment and sentence indicated that restitution would be imposed in an amount “to be set.” CP 24. Under RCW 9.94A.753(1), the court was required to determine the amount of restitution within 180 days of sentencing, by May 26, 2007. The restitution amount was not determined until the September 25, 2007, hearing, however, and the restitution order was not entered until October 22, 2007. CP 79-80. Although the order contains boilerplate language indicating that the court determined the

Regardless of the provisions of subsections (1) through (6) of this section, the court shall order restitution in all cases where the victim is entitled to benefits under the crime victims' compensation act, chapter 7.68 RCW. If the court does not order restitution and the victim of the crime has been determined to be entitled to benefits under the crime victims' compensation act, the department of labor and industries, as administrator of the crime victims' compensation program, may petition the court within one year of entry of the judgment and sentence for entry of a restitution order. Upon receipt of a petition from the department of labor and industries, the court shall hold a restitution hearing and shall enter a restitution order.

amount of restitution “within 180 days of sentencing, as required by RCW 9.94A.753,⁵” this is clearly not the case.

Moreover, the state made no request for a continuance, and the court made no finding of good cause, within the 180-day period. Without a timely request for a continuance and a finding of good cause prior to expiration of the statutory time limit, the court had no authority to set restitution after that time limit had expired. See Tetreault, 99 Wn. App. at 436.

In Tetreault, the state had difficulty obtaining information necessary to the restitution determination in time for the scheduled restitution hearing, so it simply struck the hearing date. Tetreault, 99 Wn. App. at 438. While the circumstances might have constituted good cause for a continuance, the state’s failure to request a continuance within the statutory time limit rendered the subsequent restitution order invalid. Id.

Here, as in Tetreault, the restitution hearing was initially scheduled within the statutory time-limit, but that hearing was stricken, as was the rescheduled hearing. The record does not indicate why the hearing was rescheduled. As in Tetreault, the state made no request to continue the restitution hearing within the 180-day time limit, nor did the court enter a finding of good cause. Although the court was required to order

⁵ CP 79

restitution to the crime victims' compensation program, regardless of the 180-day time limit, the remainder of the restitution order was not authorized by statute. Because the restitution hearing occurred after the expiration of the 180-day time limit, and there was no timely finding of good cause for the delay, the trial court had no authority to order restitution of \$100,488.35 to Michael and Theresa Kenning. That portion of the restitution order is invalid and must be vacated. See Tetreault, 99 Wn. App. at 438.

2. THE SENTENCING COURT FAILED TO HOLD THE STATE TO ITS BURDEN OF PROOF IN DETERMINING THE AMOUNT OF RESTITUTION.

As discussed above, the court's authority to impose restitution is derived from RCW 9.94A.753. Under that statute, restitution "shall be based on easily ascertainable damages for injury to or loss of property," and "[t]he amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the crime." RCW 9.94A.753(3). "Restitution shall be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property ... unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment and the court sets forth such circumstances in the record." RCW 9.94A.753(5).

Unless the defendant agrees to the amount of restitution, the state has the burden of proving the amount by a preponderance of the evidence. State v. Tobin, 161 Wn.2d 517, 524, 166 P.3d 1167 (2007). Restitution is allowed only for losses that are causally connected to the crime charged. State v. Kinneman, 155 Wn.2d 272, 286, 119 P.3d 350 (2005). While the specific damages need not have been foreseeable, the state must prove the damages would not have occurred but for the defendant's crime. Tobin, 161 Wn.2d at 524 (citing State v. Enstone, 137 Wn.2d 675, 682-83, 974 P.2d 828 (1999) and Kinneman, 155 Wn.2d at 287-88).

Following Traylor's guilty plea and sentencing, the state filed a number of restitution reports, ultimately requesting a total of \$110,634.81. CP 10-20, 31-52, 53-76; 1RP 3. Defense counsel informed that court that there was no dispute that the amounts included in the restitution reports had been paid. 1RP 4; 2RP 4. Counsel made it clear, however, that the defense disputed the existence of the necessary causal connection between those damages and Traylor's actions. 2RP 4-5, 7-8; CP 77-78. Nonetheless, the court imposed the amount requested by the state, without holding a hearing to resolve the dispute. It justified its decision by stating that Traylor had agreed to pay restitution as part of his change of plea and that the parties had agreed that the expenses were a direct result of injuries sustained in the accident. 2RP 7.

First, nothing in Traylor's statement on plea of guilty supports the court's decision. While that document contains a paragraph summarizing the law as to restitution, the provision reflects only an understanding that the court would impose restitution as provided by statute. See CP 3-4. The statement contains no waiver of the statutory limitations to restitution, including the state's burden of proving a causal connection and the time for determining restitution.

Next, the court misconstrued the parties' agreement as to expenses. The parties agreed that the amounts contained in state's restitution request were actually paid as result of the accident. But there was no agreement that those amounts were appropriately included in restitution order. To the contrary, the defense specifically disputed the causal connection of Traylor's actions to those damages. 2RP 4, 7-8.

Defense counsel informed the court that there was evidence the victim's negligence contributed to the injuries, and thus the state could not prove the injuries would not have occurred but for the charged crime. 2RP 7-8; CP 77-78. The court responded, however, that it was not aware of any case which held an evidentiary hearing was necessary to determine the victim's contributory negligence. 2RP 7. It is true there does not appear to be a Washington case directly on point. Division Three of this Court has addressed a contributory negligence argument, but in a different

context. See State v. Lohr, 130 Wn. App. 904, 125 P.3d 977 (2005), review denied, 145 P.3d 215 (2006).

In Lohr, the defendant left an unattended candle burning in her hotel room. This reckless conduct resulted in a fire which damaged the hotel where she was staying, a neighboring hotel, and several cars. Lohr, 130 Wn. App. at 906. She pleaded guilty to reckless burning but argued that she should not have to make restitution for the full amount of damages. Id. at 907. At the restitution hearing, Lohr presented evidence that the damages could have been substantially minimized if the hotel had provided working smoke detectors, fire extinguishers, and a firewall. She argued that the hotel's contributory negligence justified reducing the amount of restitution. Id. The trial court rejected this argument, finding insufficient intervening acts by the victims to break the causal connection between Lohr's acts and the resulting damages. Id. It concluded that the evidence was insufficient to find the fault necessary to reduce damages and that no extraordinary circumstances justified reducing the amount of restitution. Id.

The Court of Appeals affirmed. Noting that Lohr's contributory negligence argument amounted to a contention that most of the damages were unforeseeable, the court held that a victim's damages do not have to be foreseeable to support an order of restitution. Id. at 909. The court

held that all the damages flowed directly from Lohr's reckless conduct because, but for her starting the fire, the damages would not have occurred. Thus, contributory negligence was inapplicable in that case. Id. at 910.

Here, by contrast, the defense contended that there was evidence the victim was standing in the lane of travel to refuel his truck and that this negligent conduct on the victim's part contributed to the accident which resulted in the damages. Thus, even though Traylor was driving in a dangerous manner, the victim would not have been thrown into oncoming traffic and struck by another vehicle but for the fact that he was standing in the lane of travel. Under these circumstances, unlike in Lohr, the state could not prove that but for Traylor's negligent driving, the injuries would not have occurred.

Another significant distinction between this case and Lohr is that in Lohr, the issue of contributory negligence was resolved following a hearing at which the defense was permitted to present evidence to dispute the state's restitution claim. Here, on the other hand, the court below refused to hold an evidentiary hearing, saying it would let this Court determine whether one was necessary. 2RP 7. Clearly it was. Because there was a factual dispute as to causation and the presence of extraordinary circumstances, the court could not set restitution without

holding an evidentiary hearing. See State v. Ryan, 78 Wn. App. 758, 762, 899 P.2d 825 (where defendants objected to amount of restitution, court could not enter ex parte restitution order but had to hold evidentiary hearing within statutory time limit), review denied, 128 Wn.2d 1006 (1995).

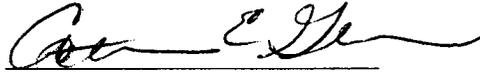
Moreover, scheduling such a hearing within statutory time constraints is the responsibility of the state, the party seeking restitution. Ryan, 78 Wn. App. at 762. If the restitution order in this case had been entered within the statutory time limit, it might be appropriate for this court to remand for an evidentiary hearing to determine whether modification of the order is necessary. See Kinneman, 155 Wn.2d at 285-86 (Court of Appeals did not err in remanding for evidentiary hearing to determine victim's losses and whether they were direct result of defendant's crime). Because the restitution hearing was not held until after expiration of the 180-day time limit, however, the order was invalid when it was entered. See Moen, 129 Wn.2d at 542. There is no valid order to be modified and no reason to remand for an evidentiary hearing. The invalid restitution order must be vacated.

D. CONCLUSION

Because restitution was not determined within the statutory time limit, the restitution order is invalid and must be vacated.

DATED this 27th day of March, 2008.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Catherine E. Glinski", written over a horizontal line.

CATHERINE E. GLINSKI

WSBA No. 20260

Attorney for Appellant

APPENDIX A

CL-21

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FILED

FEB 01 2007

Sherry W. Parker, Clerk, Clark Co.

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK**

STATE OF WASHINGTON,
Plaintiff,

v.

MICHAEL TODD TRAYLOR,
Defendant.

CITATION

No. 06-1-02117-7

TO: The above named defendant and your attorney:
Suzan L. Clark

YOU ARE HEREBY NOTIFIED to appear in the Superior Court of the State of Washington, before the Honorable John P. Wulle, Judge of the Superior Court, Department 2, at 1:30 p.m. on Friday, February 16, 2007 for a hearing re: Review of Restitution.

DATED this 31 day of January, 2007.

STATE OF WASHINGTON)

COUNTY OF CLARK)

STATE OF WASHINGTON, PLAINTIFF

BY: [Signature]
James E. David, WSBA #13754
Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

STATE OF WASHINGTON)

COUNTY OF CLARK)

On 1/31, 2007, I caused to be deposited in the mails of the United States of America a properly stamped and addressed envelope directed to the defendant [and attorney of record] containing a copy of the document to which this certificate is attached. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

[Signature]

Date: 1/31, 2007.

Place: Vancouver, Washington

CITATION - 1

khv

CLARK COUNTY PROSECUTING ATTORNEY
1013 FRANKLIN STREET • PO BOX 5000
VANCOUVER, WASHINGTON 98666-5000
(360) 397-2261 or (360) 397-2183
(360) 397-2230 (FAX)

23

APPENDIX B

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR CLARK COUNTY

JUDGE ROGER BENNETT

CAUSE NO. 06-1-02117-7

PROS ATTY ROBERT SHANNON

STATE OF WASHINGTON

DEFENSE ATTY SUZAN CLARK

VS.

REPORTER CD-VIDEO

TRAYLOR, MICHAEL TODD

CLERK JENNIFER OLSON

AKA _____ DOB _____

INTERPRETER _____

DATE FEBRUARY 16, 2007 1:30 P.M.

ASSIGNED DEPT # 2

P.O., _____

REVIEW RESTITUTION Strike Per Court

Defendant Appeared Yes/No _____ In Custody Yes/No _____ Warrant Authorized _____ Warrant Outstanding _____

Deft Answers to True Name as Charged _____ Advised of Civil and Constitutional Rights _____

Charges _____

Referral for financial Screening/Interview _____ Attorney _____ Appointed / Retained / Waived _____

Personal Recog _____ Suprvsd Rels _____ Book & Rels _____ Interview for Suprvsd Rels _____

Release is _____ Deft is Remanded to Jail _____ Bond Exonerated _____ NEW BAIL SET \$ _____

Bail Set at \$ _____ With conditions Set _____ To Be Set _____ Same as previously set _____ Posted by _____

Diversion Refl/ Confirmation _____ Waiver speedy trial signed _____ Stay Grntd _____

Next Court Appearance _____ Time _____ For Arraign _____ Admit/Set Hrg _____

PV is tracking with _____ Trial in Dept # _____ Other _____

MOTION F/CONTINUANCE: State's / Deft's / Stipulated / Calendar conflict Granted _____ Denied _____

Trial reset within speedy trial time _____ Waiver of Speedy Trial _____ sgnd _____

OVER TO/TRIAL DATE: _____ [_____] for Reset Trial Date _____ Dept # _____

Omnibus Hearing Date reset for: _____ Time: _____ Dept # _____

REVIEW OF RELEASE:

Motion to Reduce Bail _____ Granted _____ Denied _____

NEW BAIL \$ _____ With Conditions Set / Return to Court for Conditions.

Supervised Release _____ granted Personal Recog _____ granted Interview for Suprvsd Rels _____

Need to verify address or other information prior to consideration for release.

REVIEW CASE STATUS/DISCOVERY ISSUES:

Motion for Appointment of: Expert / Investigator _____ Granted _____ Denied _____ Order sgnd _____

Additional funds for Investigator _____ Granted _____ Denied _____

Interview of witnesses to be completed by _____

Requested discovery to be provided by _____

RESTITUTION

APPENDIX C

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

FILED

STATE OF WASHINGTON,
Plaintiff,

CITATION

APR 17 2007

v.

No. 06-1-02117-7

Gherry W. Partor, Clerk, Clark Co.

MICHAEL TODD TRAYLOR,
Defendant.

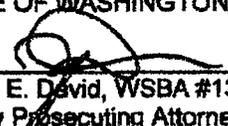
TO: The above named defendant and your attorney:
Suzan L. Clark

YOU ARE HEREBY NOTIFIED to appear in the Superior Court of the State of
Washington, before the Honorable John P. Wulle, Judge of the Superior Court, Department 2, at
9:00 a.m. on Tuesday, May 15, 2007 for a hearing re: Review of Restitution.

DATED this 16 day of April, 2007.

STATE OF WASHINGTON)
)
COUNTY OF CLARK) :ss

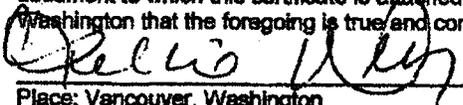
STATE OF WASHINGTON, PLAINTIFF

BY: 
James E. David, WSBA #13754
Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

STATE OF WASHINGTON)
)
COUNTY OF CLARK) :ss

On 4/17, 2007, I caused to be deposited in the mails of the United States of America a properly
stamped and addressed envelope directed to the defendant [and attorney of record] containing a copy of the
document to which this certificate is attached. I declare under penalty of perjury under the laws of the State of
Washington that the foregoing is true and correct.


Place: Vancouver, Washington

Date: 4/17/07, 2007.

CITATION - 1

klw

CLARK COUNTY PROSECUTING ATTORNEY
1013 FRANKLIN STREET • PO BOX 5000
VANCOUVER, WASHINGTON 98666-5000
(360) 397-2281 or (360) 397-2183
(360) 397-2230 (FAX)

25

APPENDIX D

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR CLARK COUNTY

JUDGE JOHN P. WULLE

PROS ATTY R. SHANNON

DEFENSE ATTY S. CLARK

REPORTER CD-VIDEO

CLERK J. BROWN

INTERPRETER _____

ASSIGNED DEPT # 2

CAUSE NO. 06-1-02117-7

STATE OF WASHINGTON

VS.

TRAYLOR, MICHAEL TODD

AKA _____ DOB _____

DATE MAY 15, 2007 9:00AM

P.O., _____

Stuber

SET RESTITUTION

Defendant Appeared Yes/No _____ In Custody Yes/No _____ Warrant Authorized _____ Warrant Outstanding _____

Deft Answers to True Name as Charged _____ Advised of Civil and Constitutional Rights _____

Charges _____

Referral for financial Screening/Interview _____ Attorney _____ Appointed / Retained / Waived _____

Personal Recog _____ Suprvsd Rels _____ Book & Rels _____ Interview for Suprvsd Rels _____

Release is _____ Deft is Remanded to Jail _____ Bond Exonerated _____ NEW BAIL SET \$ _____

Bail Set at \$ _____ With conditions Set _____ To Be Set _____ Same as prevoiusly set ____ Posted by _____

Diversion Refrl/ Confirmation _____ Waiver speedy trial signed _____ Stay Grntd _____

Next Court Appearance _____ Time _____ For Arraign _____ Admit/Set Hrg _____

PV is tracking with _____ Trial in Dept # _____ Other _____

[Handwritten signature]

APPENDIX E

FILED

JUN 05 2007

Sherry W. Parker, Clerk, Clark Co

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,
Plaintiff,

CITATION

v.

No. 06-1-02117-7

MICHAEL TODD TRAYLOR,
Defendant.

TO: The above named defendant and your attorney:
Suzan L. Clark

YOU ARE HEREBY NOTIFIED to appear in the Superior Court of the State of Washington, before the Honorable John P. Wulle, Judge of the Superior Court, Department 2, at 9:00 a.m. on Monday, July 2, 2007 for a hearing re: Review of Restitution.

DATED this 4 day of June, 2007.

STATE OF WASHINGTON)
)
COUNTY OF CLARK) :ss

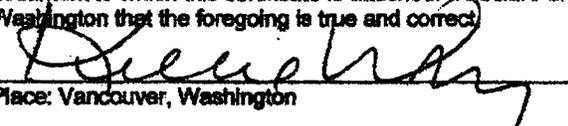
STATE OF WASHINGTON, PLAINTIFF

BY: 
James E. David, WSBA #13754
Senior Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

STATE OF WASHINGTON)
)
COUNTY OF CLARK) :ss

On 6/5, 2007, I caused to be deposited in the mails of the United States of America a properly stamped and addressed envelope directed to the defendant [and attorney of record] containing a copy of the document to which this certificate is attached. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

 Date: 6/5, 2007.
Place: Vancouver, Washington

CITATION - 1

klw

CLARK COUNTY PROSECUTING ATTORNEY
1013 FRANKLIN STREET • PO BOX 5000
VANCOUVER, WASHINGTON 98666-5000
(360) 397-2261 or (360) 397-2183
(360) 397-2230 (FAX)



APPENDIX F

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FILED

JUN 06 2007

Berry W. Parker, Clerk, Clark Co.

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK**

STATE OF WASHINGTON, Plaintiff,	CITATION
v.	No. 06-1-02117-7
MICHAEL TODD TRAYLOR, Defendant.	

TO: The above named defendant and your attorney:
Suzan L. Clark

YOU ARE HEREBY NOTIFIED to appear in the Superior Court of the State of Washington, before the Honorable John P. Wulle, Judge of the Superior Court, Department 2, at 9:00 a.m. on Thursday, June 7, 2007 for a hearing re: Review of Restitution.

DATED this 7 day of June, 2007.

STATE OF WASHINGTON)	STATE OF WASHINGTON, PLAINTIFF
COUNTY OF CLARK):ss	BY: <u>James E. David</u> James E. David, WSBA #13754 Deputy Prosecuting Attorney

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STATE OF WASHINGTON)
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James E. David Date: 6/5/, 2007.
Place: Vancouver, Washington

CITATION - 1
khw

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1013 FRANKLIN STREET • PO BOX 5000
VANCOUVER, WASHINGTON 98666-5000
(360) 397-2281 or (360) 397-2183
(360) 397-2730 (FAX)

Handwritten mark

APPENDIX G

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR CLARK COUNTY

JUDGE JOHN P. WULLE

CAUSE NO. 06-1-02117-7

PROS ATTY R. SHANNON

STATE OF WASHINGTON

DEFENSE ATTY S. CLARK (P)

VS:

REPORTER CD-VIDEO

TRAYLOR, MICHAEL T

CLERK J. BROWN

AKA _____ DOB _____

INTERPRETER _____

DATE JUNE 7, 2007 9:00AM

ASSIGNED DEPT # 2

P.O., _____

SET RESTITUTION Case called 10:21am

Defendant Appeared Yes/No (No) In Custody Yes/No _____ Warrant Authorized _____ Warrant Outstanding _____

Deft Answers to True Name as Charged _____ Advised of Civil and Constitutional Rights _____

Charges _____

Referral for financial Screening/Interview _____ Attorney _____ Appointed / Retained / Waived _____

Personal Recog _____ Suprvsd Rels _____ Book & Rels _____ Interview for Suprvsd Rels _____

Release is _____ Deft is Remanded to Jail _____ Bond Exonerated _____ NEW BAIL SET \$ _____

Bail Set at \$ _____ With conditions Set _____ To Be Set _____ Same as previously set _____ Posted by _____

Diversion Refil/ Confirmation _____ Waiver speedy trial signed _____ Stay Grntd _____

Next Court Appearance 7-19-07 72 Time 900 For Arraign _____ Admit/Set Hrg _____

PV is tracking with _____ Trial in Dept # _____ Other Restitution Hrg

APPENDIX H

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR CLARK COUNTY

JUDGE Wulke / Bennett
PROS. ATTY Shannon
DEFENSE ATTY Suzan Clark
REPORTER VIDE/CO
CLERK JULIE BROWN

CAUSE NO. Do-1-D2117-7
STATE OF WASHINGTON
VS.
Traylor, Michael Todd

P.O.: _____
ASSIGNED DEPT # 1 2 3 4 5 6 7 8 9 *Stacy*
BOOKING DATE: _____

AKA: _____ DOB: _____
Date: 7.2.07
INTERPRETER _____
CFN: _____

1ST APPEAR ARRAIGNMENT CHANGE OF PLEA SENT VIOL REV RELEASE OMNIBUS OTHER *Review Restitution*

Defendant Appeared Yes/No In Custody Yes No Warrant Authorized _____ Warrant Outstanding _____

Deft Answers to True Name as Charged _____ Advised of Civil & Constitutional Rights _____

Charges _____ Referral for Financial Screening/ Interview _____ Attorney _____ Appointed/ Retained/ Waived _____

Personal Recognizance/ Supervised Release Granted / Denied . Release Revoked _____

Order for Psych Eval at WSH _____ Orders signed _____

Bail \$ _____ With Conditions Set/ Return to Court to Be Set/ Previously set. Bail Posted By: _____

Diversion Referral/ Confirmation _____ Stay Granted _____ FV: Admit _____ Deny _____ Set Hrg _____

Next Court Appearance _____ Time _____ For Arraign _____ Omnibus _____ Payment Rev _____

PV tracking with _____ Trial in Dept # _____ Other _____

NOT GUILTY PLEA/MOTION TO CONTINUE
Information Served on Defendant _____
Not Guilty Plea Entered _____
Readiness Hearing Date _____ RS 1:30PM
Waiver of Speedy Trial Signed _____
Motion For Continuance of Trial Granted _____ Denied _____
Trial Date _____ []

GUILTY PLEA Original/ Amended
Statement on Plea of Guilty _____ Sgnd
Psych Evaluation Ordered _____
Pre-sentence Report Ordered _____
Dismissal of Counts # _____
Sentencing Date _____

SENTENCING
Courts Finds the Defendant:
_____ Guilty as Charged Based on Plea of Guilty
_____ Convicted by the Jury _____ Court
_____ in violation based on admissions

OMNIBUS
Def Omnibus _____ Sgnd State's Omnibus _____ Sgnd
Cut Off date _____

Defendant is Sentenced to Jail /DOC for _____ Days/ Months/ Years to be Served as Follows:

CTS _____ JAIL _____ WORK RELEASE _____ WORK CREW _____ COMM SERV _____

Misdemeanor Sent _____ days with _____ days suspended/ deferred on conditions for _____ months/ years.

Community Custody / Placement _____ Mos. SSOSA _____ HIV/ DNA _____ DNA Fee \$ _____

Court Costs \$ _____ Fine \$ _____ Drug Fund \$ _____ Atty Fees \$ _____ Extdt \$ _____

Restitution \$ _____ Victim Assess \$ _____ Lab Fee \$ _____ DV Penalty \$ _____

Judgment & Sentence Sgnd _____ Defendant Fingerprinted Yes/No Other Costs \$ _____

Deft is Advised of His/ Her Rights to Appeal _____ Deft Served With Map to DOC / COLLECTIONS _____

Court Sets Appeal Bond at \$ _____ Attorney _____ Appointed for Appeal.

JOURNAL OF CRIMINAL MINUTE ENTRIES

[Handwritten signature]

Certification of Service by Mail

Today I deposited in the mails of the United States of America, postage prepaid,
properly stamped and addressed envelopes containing copies of the Brief of Appellant in

State v. Michael Traylor, Cause No. 36932-0-II directed to:

Michael C. Kinnie
Clark County Prosecutor's Office
PO Box 5000
Vancouver, WA 98666-5000

Michael Todd Traylor
402 St. Louis Way
Vancouver, WA 98664

FILED
COURT OF APPEALS
DIVISION II
08 MAR 28 PM 1:34
STATE OF WASHINGTON
BY [Signature]

I certify under penalty of perjury of the laws of the State of Washington that the
foregoing is true and correct.



Catherine E. Glinski
Done in Port Orchard, WA
March 27, 2008